

No. SC93120

IN THE
Supreme Court of Missouri

CLAYTON DEAN PRICE,

Respondent,

v.

STATE OF MISSOURI,

Appellant.

Appeal from the Taney County Circuit Court
Thirty-eighth Judicial Circuit
The Honorable J. Edward Sweeney, Judge

APPELLANT'S SUBSTITUTE REPLY BRIEF

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ARGUMENT

I.

The motion court clearly erred in finding that counsel abandoned Mr. Price.

A. Abandonment is a limited doctrine, and circuit courts do not have “considerable discretion” to expand the doctrine. In responding to Point I, Mr. Price asserts that “[t]he motion court has considerable discretion in determining whether post-conviction counsel has abandoned a movant” (Resp.Br. 16). For this proposition, Mr. Price cites *Riley v. State*, 364 S.W.3d 631, 636 (Mo.App. W.D. 2012), which quoted *Crenshaw v. State*, 266 S.W.3d 257, 259 (Mo. banc 2008), for the proposition that “[t]he precise circumstances, in which a motion court may find abandonment, are not fixed” (Resp.Br. 17-18). But no Missouri court has ever stated that the motion court has “considerable discretion” in determining whether post-conviction counsel has abandoned the movant.

To the contrary, Missouri courts have generally limited attempts to expand the abandonment doctrine. *See Middleton v. State*, 350 S.W.3d 489, 492 n. 3 (Mo.App. W.D. 2011) (noting that “the Missouri Supreme Court has expressly limited abandonment scenarios, [citing *Gehrke v. State*, 280 S.W.3d 54, 57 (Mo. banc 2009)], and has likewise ‘repeatedly held it will not expand the scope of abandonment to encompass perceived ineffectiveness of post-

conviction counsel[.]’ ”); *see also Riley v. State*, 364 S.W.3d at 635-638 (rejecting the movant-appellant’s attempt to expand abandonment to include post-conviction counsel’s failing to review a particular transcript).

It is true that the Court in *Crenshaw* stated that “[t]he precise circumstances, in which a motion court may find abandonment are not fixed,” but the Court then went on to state that “in general abandonment is available ‘when (1) post-conviction counsel takes no action on a movant’s behalf with respect to filing an amended motion and as such the record shows that the movant is deprived of a meaningful review; or (2) when post-conviction counsel is aware of the need to file an amended post-conviction relief motion and fails to do so in a timely manner.’” *Crenshaw*, 266 S.W.3d at 259. The only other circumstance recognized by this Court (and the one relevant here) is “. . . when post-conviction counsel’s overt actions prevent the movant from filing the original motion timely.” *Moore v. State*, 328 S.W.3d 700, 702 (Mo. banc 2010). These precedents do not suggest that a motion court has “considerable discretion” to find and, if necessary, expand the abandonment doctrine.

B. Mr. Price’s argument will effectively eliminate the mandatory time limit for defendants who retain private counsel to file their post-conviction motions. Mr. Price asserts that “Missouri courts draw no distinction between appointed and retained counsel for purposes of abandonment” (Resp.Sub.Br.

19, 22).¹ But he fails to address the fact that the rule he proposes will allow post-conviction litigants who hire counsel to ignore and avoid the mandatory time limits of the rule. He argues instead that he (unlike *McFadden*) will be “penalize[d]” for not using an appointed attorney from the public defender’s offer (Resp.Sub.Br. 23). But Mr. Price will not be penalized for hiring an attorney; rather, he will simply be treated like any other indigent movant who fails to timely file his initial post-conviction motion.

Moreover, Mr. Price is incorrect in suggesting that the defendant in *McFadden* was abandoned by appointed counsel. The circumstances in that case were unique because, although *McFadden* was indigent, the public defender had not yet been appointed, and an assistant public defender created an attorney-client relationship with the defendant before he filed his *pro se* motion. See *State v. McFadden*, 256 S.W.3d 103, 105-107 (Mo. banc

¹ When it comes to the filing of the amended motion, Missouri Courts have sometimes drawn a distinction between appointed counsel and privately retained counsel. See *Daugherty v. State*, 159 S.W.3d 405, 408 (Mo.App. E.D. 2005); *State v Gilpin*, 954 S.W.2d 570, 579 (Mo.App. W.D. 1997). The Court of Appeals in *Castor v. State*, 245 S.W.3d 909, 912 (Mo.App. E.D. 2008), declined to follow *Daugherty* and *Gilpin*. Mr. Price’s case does not implicate this particular controversy.

2008). But in the ordinary case, a public defender will not enter a case until the public defender has been appointed. *Id.* at 105; Rule 29.15(e). Thus, aside from the rare and extraordinary circumstances that arose in *McFadden*, only those defendants who hire counsel will be able to rely on counsel and abdicate their responsibility for meeting the mandatory deadline of the rule.

In short, Mr. Price's proposed rule will allow defendants who hire counsel to file out of time simply because they will be able to assert that their attorney failed to meet the deadline. The holding in *McFadden* should not be expanded to encompass such ordinary failures and to create such a disparity between indigent and non-indigent litigants.

C. Unlike the defendant in McFadden, Mr. Price did not do all he could do to express an intent to seek relief under Rule 29.15 and secure review of his claims. Mr. Price asserts that “[t]he only difference between Price and *McFadden* is that Price retained counsel and *McFadden* utilized a public defender” (Resp.Sub.Br. 22). But Mr. Price is incorrect. The defendant in *McFadden* timely drafted a *pro se* motion and had it ready for filing. 256 S.W.3d at 105. The defendant also timely mailed the motion to counsel, giving counsel sufficient time to deposit the motion in the circuit court. *Id.* By contrast, Mr. Price took no similar actions. Thus, contrary to Mr. Price's assertion, privately retained counsel did not “actively interfere[] with Price's right to post-conviction relief by abandoning Price in the same way the public

defender abandoned McFadden” (Resp.Sub.Br. 23). Unlike the defendant in *McFadden*, Mr. Price did not timely prepare his initial post-conviction motion, and he did not timely mail his motion in an attempt to have it timely filed. In these respects, Mr. Price was not “blameless” in the same way that the defendant in *McFadden* was blameless (Resp.Sub.Br. 23).

Mr. Price cites to a concurring opinion in *Holland v. Florida*, 130 S.Ct. 2549 (2010)—a case that held that “equitable tolling” applies to the one-year statute of limitations for habeas petitions (Resp.Sub.Br. 23). But equitable tolling of a statute of limitations is a distinctly different issue. *See Dorris v. State*, 360 S.W.3d 260, 268-269 (Mo. banc 2012) (holding that the mandatory time limits of Rule 29.15 are different from statutes of limitations). And, in any event, *Holland* does not aid Mr. Price. There, the Court reiterated “that ‘a garden variety claim of excusable neglect,’ . . . such as a simple ‘miscalculation’ that leads a lawyer to miss a filing deadline, . . . does not warrant equitable tolling.” 130 S.Ct. at 2564. The Court then pointed out that the attorney’s failing to file on time and unawareness of the limitations period might have been “simple negligence,” except that other facts suggested otherwise. In particular, the Court observed that the attorney “failed to file Holland’s federal petition on time despite Holland’s many letters that repeatedly emphasized the importance of his doing so.” *Id.* The attorney also “apparently did not do the research necessary to find out the proper filing

date, despite Holland's letters that went so far as to identify the applicable legal rules." *Id.* The attorney also "failed to inform Holland in a timely manner about the crucial fact that the Florida Supreme Court had decided his case, again despite Holland's many pleas for that information." *Id.* And, finally, the attorney "failed to communicate with his client over a period of years, despite various pleas from Holland that [the attorney] respond to his letters." *Id.* Here, Mr. Price cannot point to similar failures by counsel; rather, he can only point to a "garden variety claim of excusable neglect"—counsel's carelessness about the filing deadline.

In making this argument, Mr. Price faults the state for "pluck[ing] from thin air [an] assertion that Price 'apparently' was not instructed by counsel not to file his own *pro se* motion" (Resp.Sub.Br. 23). But this particular argument is not accompanied by any citation to the state's brief, and the state did not argue in its brief that Mr. Price "apparently" was not instructed by counsel to file his own motion. The state did assert that "counsel did not instruct Mr. Price to refrain from filing a motion or otherwise actively prevent him from doing so," but this assertion was based on the absence of any evidence, allegation, or finding suggesting that counsel instructed Mr. Price to refrain from filing. If counsel *had* instructed Mr. Price to refrain from filing a motion, there can be little doubt but that Mr. Price would have mentioned that fact.

Mr. Price also cites *Maples v. Thomas*, 132 S.Ct. 912, 924 (2012), for the following proposition: “[A] client cannot be charged with the acts or omissions of an attorney who has abandoned him. Nor can a client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him” (Resp.Br. 22). But Mr. Price’s reliance on this language is problematic for multiple reasons. First, the Court in *Maples* was not discussing Missouri’s concept of “abandonment” by post-conviction counsel; rather, it was discussing abandonment in a case where the defendant’s attorneys had severed the attorney-client relationship.

In *Maples*, the attorneys who were representing the defendant in a post-conviction case that had already been timely filed, took new jobs that rendered them unable to continue “to serve as his counsel,” but they did not inform the defendant. *Id.* at 916, 919. Thereafter, the post-conviction motion was denied, and the defendant (who had not been kept apprised of the case) did not file an appeal. *Id.* at 919-920. The failure to file an appeal was later raised as a procedural bar in a federal habeas proceeding, and the defendant then argued that his failing to exhaust state remedies should not be held against him because he had been wholly abandoned by his post-conviction attorneys. *See id.* at 921. The United States Supreme Court took the case to determine whether the abandonment of the representation by post-conviction counsel should constitute “cause” to allow the defendant to overcome the

procedural default. *Id.* at 917.

As is evident, the abandonment in that case was a complete abdication of the representation that counsel had commenced by filing a post-conviction motion. *See id.* at 922-923 (“Having severed the principal-agent relationship, an attorney no longer acts, or fails to act, as the client’s representative.”). Here, however, Mr. Price asserts that the attorney-client relationship did not cease, and that counsel was merely inattentive to a deadline and failed to file a motion within time limits (*see* Resp.Br. 19, 22). In other words, Mr. Price has argued that counsel was still his agent, and that his agent failed to file a timely motion. But under the principles set forth in *Maples*, if that is so, then Mr. Price should be liable for the negligence of his attorney, as “under ‘well-settled principles of agency law,’ the principal bears the risk of negligent conduct on the part of his agent.” *Id.* at 922. In short, “when a petitioner’s post-conviction attorney misses a filing deadline, the petitioner is bound by the oversight and cannot rely on it to establish cause” to overcome a procedural default in a subsequent habeas petition. *Id.* *See also Holland*, 130 S.Ct. at 2564 (“an attorney’s negligence, for example, miscalculating a filing deadline, does not provide a basis for tolling a statutory time limit”).

It is, thus, apparent that the Court in *Maples* was not discussing abandonment in the same sense that it is discussed in cases like *McFadden*. For, under the agency law referenced in *Maples*, Mr. McFadden would have

been responsible for the untimely filing by his attorney, and he would not have been able to claim abandonment. In other words, if *Maples* is controlling, then *McFadden* was wrongly decided because under the rules examined in that case an attorney's failure in meeting a deadline must be imputed to the defendant.

Finally, to the extent that *Maples* has any bearing on Mr. Price's situation, it does not support the motion court's judgment in this case. The decision in *Maples* stands for the proposition that counsel's actions in wholly abandoning representation after instituting a post-conviction case can provide "cause" for a subsequent procedural default. *Id.* at 924. Here, if Mr. Price could show such abandonment on the part of counsel (namely, that counsel unilaterally severed the attorney-client privilege and failed to represent him), then he could rely on *Maples* to argue in a habeas proceeding that his failing to avail himself of available remedies should be excused (*i.e.*, that there was "cause").

D. Mr. Price's attempt to distinguish Bullard is unavailing. Mr. Price initially acknowledges, that the attorney in *Bullard* "agreed to represent [the defendant] in the 29.15 proceedings" (Resp.Sub.Br. 25). *See Bullard v. State*, 853 S.W.2d 921, 922 (Mo. banc 1993). But Mr. Price later argues that *Bullard* is distinguishable because "Price, unlike Bullard, was not acting *pro se* and simply relying on the incorrect advice of counsel regarding the filing

deadline” (Resp.Sub.Br. 26). He then argues that “where, as here, counsel agrees to file the 29.15 motion and fails to do so, counsel has abandoned the client, and late filing should be permitted” (Resp.Sub.Br. 26-27).

But contrary to Mr. Price’s argument, the defendant in *Bullard* was not acting *pro se*. As Mr. Price initially admitted, and as stated in *Bullard*, an attorney had agreed to represent Mr. Bullard in his Rule 29.15 case. *Id.* at 922. Thus, the defendant in *Bullard* was not proceeding *pro se* and simply relying on counsel for advice about the filing deadline. Counsel had agreed to represent Mr. Bullard, and, thus, counsel failed to file a post-conviction motion—just like Mr. Price’s retained counsel. And yet, counsel’s conduct in *Bullard* did not amount to abandonment.

Mr. Price also asserts that in *Bullard*, “there is no indication that appellate counsel took from Bullard the ability to file the motion himself” (Resp.Sub.Br. 27). But Mr. Price’s counsel similarly did not take from Mr. Price the ability to file a *pro se* motion. Because both Mr. Bullard and Mr. Price were represented by counsel in the initial stage of the post-conviction proceeding, they both had the same ability to file a *pro se* motion. Mr. Price asserts without citation to the record that it would have been difficult or impossible for him to file a *pro se* motion because post-conviction counsel “presumably still had Price’s file from his appellate work” (Resp.Sub.Br. 31). But as this Court recognized in *Bullard*, “[a]n original motion . . . is relatively

informal, and need only give notice to the trial court, the appellate court, and the State that movant intends to pursue relief under Rule 29.15.” *Bullard*, 853 S.W.2d at 922-923. The movant does not require legal assistance to file the initial motion. *Id.* Thus, Mr. Price’s claim is not well taken.

E. The rules of professional responsibility should not be used to expand the doctrine of abandonment to include claims of ineffective assistance of counsel. The Rules of Professional Responsibility can provide guidance in determining whether counsel’s performance was deficient, but the question of abandonment has generally been limited to examining whether counsel has fulfilled the obligations set forth in Rule 29.15(e) or, more recently in *McFadden*, whether counsel actively interfered with an otherwise timely filing of the initial *pro se* motion. If abandonment were to arise in every case where it could be said that post-conviction counsel violated the professional rules, then the doctrine of abandonment would become a vehicle for asserting claims of ineffective assistance of post-conviction counsel. This Court has repeatedly held that claims of ineffective assistance of post-conviction counsel are categorically unreviewable, and that the concept of abandonment will not be expanded to include such claims. *See Gehrke v. State*, 280 S.W.3d 54, 58 (Mo. banc 2009).

F. Mr. Price’s reliance on cases from other jurisdictions is misplaced. As a final argument, Mr. Price asserts that “a finding of abandonment is

consistent with federal jurisprudence and abandonment cases in other states” (Resp.Sub.Br. 32). For instance, he cites *Holland* and other federal and state cases dealing with equitable tolling (Resp.Sub.Br. 32-35). As discussed above, *Holland* does not aid Mr. Price, and, in any event, such cases are irrelevant in the abandonment context because they do not analyze Missouri’s post-conviction rule in light of this Court’s controlling precedents.

In sum, “[t]he time limitations set forth in the Rule ‘are valid and mandatory’ and ‘serve the legitimate end of avoiding delay in the processing of prisoners’ claims and prevent[ing] the litigation of stale claims.” *Henderson v. State*, 372 S.W.3d 11 (Mo.App. W.D. 2012) (quoting *Day v. State*, 770 S.W.2d 692, 695 (Mo. banc 1989)). Mr. Price had the same right as any other post-conviction litigant: to file a timely motion pursuant to the rule and have his claims reviewed in a timely fashion. He failed to timely file, and he did not prove that he was “abandoned” by post-conviction counsel. It is apparent that Mr. Price believes that his constitutional rights have been violated, but until his claims are properly adjudicated, according to the rule of law, he is not entitled to have his conviction and sentence vacated.

II.

The motion court clearly erred in ordering that Mr. Price’s Rule 29.15 motion be filed more than four years out of time, because even if Mr. Price was “abandoned” by counsel, he failed to file his Rule 29.15 motion within a reasonable amount of time after the alleged abandonment took place. (Reply to Respondent’s Points II and III.)

In his second point, Mr. Price asserts that the Court should decline to consider the state’s claim that his motion to file out of time was not filed within a reasonable amount of time (Resp.Sub.Br. 39). He points out that the state did not raise this claim in the court below (Resp.Sub.Br. 39).

As acknowledged in its opening brief (App.Sub.Br. 39), the state agrees that, generally, if a claim is not presented to the motion court, it cannot be asserted on appeal. But the general rule does not apply to the time limits of Rule 29.15. In *Dorris v. State*, 360 S.W.3d 260, 268 (Mo. banc 2012)—a case that was not decided until after the motion court’s rulings in this case—this Court stated that “[i]t is the court’s duty to enforce the mandatory time limits and the resulting complete waiver in the post-conviction rules—even if the State does not raise the issue” in the motion court. Stated another way, “[t]he State cannot waive movant’s noncompliance with the time limits in Rules 29.15 and 24.035.” *Id.*

Aside from accusing the state of “employ[ing] ‘gotcha!’ litigation tactics

a grade school child could see are unfair” (Resp.Sub.Br. 42), Mr. Price does not confront the consequence of this basic holding of *Dorris*—that because the state cannot waive the time limits of the rule, the state also cannot *effectively* waive the time limits by failing to make an argument. Moreover, the state’s belated reliance on the rule announced in *Dorris* is not a “gotcha tactic”—*Dorris* was not decided until 2012, well after the motion court granted Mr. Price’s motions.

In his third point, Mr. Price asserts that “nothing in Rule 29.15, *McFadden*, *Moore*, *Gehrke*, or *Luleff* requires that a post-conviction motion asserting abandonment by post-conviction counsel be filed by any set deadline or in a ‘reasonable amount of time,’ as the State suggests” (Resp.Sub.Br. 44). But as the state asserted in its opening brief, one of the primary purposes of the post-conviction rules is to avoid the litigation of stale claims (App.Sub.Br. 37). “The time limitations set forth in the Rule ‘are valid and mandatory’ and ‘serve the legitimate end of avoiding delay in the processing of prisoners’ claims and prevent[ing] the litigation of stale claims.” *Henderson v. State*, 372 S.W.3d 11 (Mo.App. W.D. 2012) (quoting *Day v. State*, 770 S.W.2d 692, 695 (Mo. banc 1989)). Thus, it stands to reason that there should be reasonable time limits placed on a motion seeking to re-open a post-conviction case.

Indeed, while Missouri Courts have heretofore allowed belated motions

to re-open or file out of time (as shown by some of the cases cited in Mr. Price's brief) (Resp.Sub.Br. 44-45), it makes sense to impose reasonable limits on post-conviction remedies. "A person who has suffered criminal conviction is bound to raise all challenges thereto timely and in accordance with the procedures established for that purpose." *State ex rel. Simmons v. White*, 866 S.W.2d 443, 446 (Mo. banc 1993). "To allow otherwise would result in a chaos of review unlimited in time, scope, and expense." *Id.* See also *State v. Thompson*, 659 S.W.2d 766, 769 (Mo. banc 1983) (" 'To require courts to consider and reconsider cases at the will of litigants would deprive the courts of that stability which is necessary in the administration of justice.' "). And inasmuch as abandonment is a judicially created exception to the rules, the Court can place reasonable limits upon its application.

III.

The state's notice of appeal was timely filed. (Reply to Respondent's Point IV.)

In his fourth point, Mr. Price asserts that this Court lacks jurisdiction over this appeal because the state's notice of appeal was not timely filed (Resp.Sub.Br. 49). But Mr. Price is incorrect.

The motion court's judgment in this case was entered on October 26, 2011 (PCR L.F. 80-130). Neither party filed an after-trial motion; thus, pursuant to Rule 81.05(a)(1), the motion court's judgment became final on November 25, 2011.

Pursuant to Rule 81.04(a), the state had to file its notice of appeal "not later than 10 days after the judgment or order appealed from" became final. Accordingly, the state had to file its notice of appeal by December 5, 2011.

The state filed its notice of appeal on November 23, 2011, two days before the motion court's judgment became final (PCR L.F. 131). Pursuant to Rule 81.05(b), when a notice of appeal is filed prematurely, "such notice shall be considered as filed immediately after the time the judgment becomes final for the purpose of appeal." Thus, the state's notice of appeal was timely filed.

Mr. Price argues that the state should have filed its notice of appeal "no later than 40 days after September 7, 2010"—the date that the motion court granted Mr. Price's motion to re-open the post-conviction case and file his

post-conviction motion out of time (Resp.Sub.Br. 50). Mr. Price points out that, under Rule 29.15(k), “[a]n order sustaining or overruling a motion filed under the provisions of this Rule 29.15 shall be deemed a final judgment for purposes of appeal by the movant or the state” (Resp.Sub.Br. 50). But this argument is fundamentally flawed.

Mr. Price’s motion to file out of time was not “filed under the provisions of . . . Rule 29.15.” A motion to re-open is not authorized by any provision of Rule 29.15. Instead, “[w]hile there is no provision in Rule 75.01 to allow late filings, this Court has recognized a late filing may be accepted when a movant has been abandoned by postconviction counsel.” *Eastburn v. State*, 400 S.W.3d 770 (Mo. banc 2013); see *Crenshaw v. State*, 266 S.W.3d 257, 259 (Mo. banc 2008); *Edgington v. State*, 189 S.W.3d 703, 706 (Mo.App. W.D. 2006) (“pursuant to Rule 75.01, the trial court’s jurisdiction to reopen such proceedings is limited to the thirty days following the court’s ruling in the post-conviction proceeding,” and “[t]he only exception to this limitation is the exception that allows the post-conviction court to reopen the proceeding to address a claim of abandonment by post-conviction counsel”). In short, motions to file out of time are permitted solely by a judicially-created exception to the ordinary rules of civil procedure; they are not filed pursuant to any provision of Rule 29.15.

Thus, the order granting Mr. Price’s motion to re-open the case and file

a late post-conviction motion was not a final appealable judgment. To the contrary, by granting the motion to re-open the case, the motion court rendered the previously resolved case unresolved. “For a judgment to be final and appealable, it must dispose of all issues and all parties in the litigation, and leave nothing for future determination.” *Dewey ex rel. Boyd v. Barnes-Jewish Hosp.*, 369 S.W.3d 101, 102 (Mo.App. E.D. 2012). Here, the order granting Mr. Price’s motion to re-open the case did not resolve all of the issues in the case.

Mr. Price points out that the motion court’s final judgment “deals with the merits of [his] 29.15 motion and does not contain any findings regarding abandonment” (Resp.Sub.Br. 50). He then points out that “[t]he State has not challenged . . . these merits findings,” and he asks, “How can the State say it is appealing from an order which it does not contest in any manner?” (Resp.Sbu.Br. 50). But Mr. Price’s argument is not well taken.

The motion court’s judgment granting post-conviction relief was the judgment that made all of its rulings in the case final for purposes of appeal. The absence of specific findings about abandonment is irrelevant because it is apparent from the judgment that the motion court adhered to its earlier finding of abandonment and granted relief. If Mr. Price was dissatisfied with the lack of findings on the issue of abandonment in the final judgment, he should have filed a motion to amend the judgment as provided for under Rule

78.07(c). As the record stands, however, the motion court's reasoning is apparent from the record because the motion court made findings when it granted Mr. Price's motion to file out of time (PCR L.F. 75-79). And, finally, the state does contest the motion court's final judgment (in its entirety) because all of the motion court's findings and conclusions were erroneously entered, in that Mr. Price's post-conviction motion was untimely filed. The fact that the state has chosen to assert clear error on the issue of timeliness and whether Mr. Price was abandoned by post-conviction counsel does not mean that the state has failed to challenge the motion court's judgment, or that the state agrees that the motion court's judgment was otherwise correct in resolving the merits of Mr. Price's claims.

In short, it was only after the motion court resolved the remaining issues in the case and issued its judgment that any party could appeal the motion court's judgment. And that is precisely what the state has done in asserting that the motion court clearly erred in allowing the untimely filing of Mr. Price's motion and granting relief on the claims therein. *See generally Middleton v. State*, 200 S.W.3d 140, 142 (Mo.App. W.D. 2006) (the motion court held a hearing in December, 2003, to determine whether to re-open the post-conviction case; the court re-opened the case and held an evidentiary hearing on the merits of the post-conviction claims in June, 2004; the motion court issued its judgment in May, 2005; the parties then appealed the motion

court's judgment; and the state prevailed on its claim that the motion court had erred in re-opening the post-conviction case). The state's notice of appeal was timely filed, and the Court has jurisdiction over this appeal.

CONCLUSION

The Court should vacate the motion court's judgment and remand this case with an order to dismiss Mr. Price's untimely filed Rule 29.15 motion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I certify that the attached reply brief complies with Rule 84.06(b) and contains 4,915 words, excluding the cover, this certification, and the signature block, as counted by Microsoft Word; and that an electronic copy of this brief was sent through the Missouri eFiling System on this 6th day of August, 2012, to:

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